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June 18, 2024

VIA ELECTRONIC MAIL

Honorable Joel Schneider (Ret.)
Montgomery McCracken Walker & Rhoads LLP
457 Haddonfield Road, Suite 600
Cherry Hill, NJ 08002

**Re: In RE: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices,
and Products Liability Litigation (MDL No. 2738) – Request For Hess Deposition
Deadline**

Dear Judge Schneider:

I write on behalf of Defendants regarding your Order denying the PSC's motion to quash a deposition of Paul Hess. ECF 32817.

As discussed in your Order, Mr. Hess's testimony concerns a "case-defining" issue. *Id.* at 2. Plaintiffs' expert Dr. Longo intends to offer testimony that he is finding chrysotile asbestos in all or nearly all of talcum powder bottles he tests. As discussed at length in the briefing on the motion, Dr. Longo's opinion depends entirely on an "Emperor's New Clothes" methodology: looking at particles that everyone with their own two eyes can see are yellow yet claiming they are, in fact, purple.

But as you explained in your Order, "Hess, not Longo, is the analyst that conducted the PLM tests that support Longo's opinions." *Id.* at 2. "Hess, not Longo, did the microscopic analysis required." *Id.* And "Hess is the lead person at MAS who conducted PLM chrysotile analysis on J&J's talc and whose name is on MAS's reports that will be relied upon at trial." *Id.* Accordingly, "Hess has important firsthand information relevant to a crucial issue in the case that may not be obtained from another source," and "exceptional circumstances exist to depose Hess." *Id.*

Your Order, however, did not set forth any deadline by which the deposition of Mr. Hess must take place. It has now become apparent that a deadline is required. Defense counsel reached out to Plaintiffs' counsel on Thursday last week to coordinate a date for Mr. Hess's deposition. Defendants proposed June 24, 25, or 26. See **Exhibit A**. However, Defendants did not receive any response to that proposal. Defendants are concerned that the PSC is attempting to avoid or delay a deposition of Mr. Hess which would finally shine light on an issue so central to this MDL.

In short: Scheduling Mr. Hess's deposition is critical given his importance to the case. And it is also important that his deposition occur prior to defense expert Dr. Shu-Chun Su's deposition currently scheduled for July 2. That sequencing will give Dr. Su a fair opportunity to evaluate the

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information that arises out of the Mr. Hess's deposition, comment on it, and also give the PSC an opportunity to question Dr. Su on those issues. Notably, the notice of intent to serve Mr. Hess with a subpoena was served on April 22, 2024. There is a July 2 deadline to complete expert depositions and a July 23 deadline for filing R. 702 and other motions.

Defendants already have an outstanding subpoena to Mr. Hess—the one that Your Honor concluded should not be quashed. So Defendants should not need to take any further actions. Defendants therefore request that this Court order that the deposition of Mr. Hess occur by June 28, 2024.

Respectfully submitted



Susan Sharko

cc: All Counsel (via ECF)

DMS_US.364631671.1

McCorkle, Michelle L.

From: Sharko, Susan M
Sent: Tuesday, June 18, 2024 3:56 PM
To: McCorkle, Michelle L.
Subject: FW: Paul Hess Deposition

Exhibit A**Susan M. Sharko**

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From: Matthew Bush <mbush@kslaw.com>
Sent: Thursday, June 13, 2024 12:22 PM
To: Leigh O'Dell <Leigh.ODell@BeasleyAllen.com>; Michelle Parfitt <mparfitt@ashcraftlaw.com>
Cc: Kristen Fournier (kslaw) <kfournier@kslaw.com>; Sharko, Susan M <susan.sharko@faegredrinker.com>
Subject: Paul Hess Deposition

This Message originated outside your organization.

Hi Leigh and Michelle,

Given the Special Master's ruling, we wanted to coordinate scheduling Mr. Hess's deposition. We propose June 24, 25, or 26. Let us know if one of those dates works for you and Mr. Hess.

Matt

Matthew Bush

Partner

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